



AF/2665
Applicant: Joseph A. Kwak
Application No.: 10/085,187

PATENT
IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In the **PATENT APPLICATION** of:

Joseph A. Kwak

Application No.: 10/085,187

Confirmation No.: 3548

Filed: February 27, 2002

For: METHOD FOR PHYSICAL LAYER
AUTOMATIC REPEAT REQUEST FOR
A SUBSCRIBER UNIT

Group: 2665

Examiner: Daniel J. Ryman

Our File: I-2-0203.4US

Date: December 8, 2004

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**REQUEST REINSTATEMENT OF APPEAL
AND SUPPLEMENTAL APPEAL BRIEF
UNDER 37 C.F.R. § 1.113**

Mail Stop Appeal Brief-Patents
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

Further to the September 8, 2004 Final Action, Applicant respectfully requests reinstatement of the Appeal and provides this Supplemental Appeal Brief in view of the new grounds of rejection brought up in the final action.

ARGUMENTS

In the September 8, 2004 final action, claims 1 and 7 were rejected under 35 U.S.C. §103(a) as being unpatentable over U. S. Patent No. 5,101,406 (Messenger); claims 2, 6 and 9 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Messenger in view of U. S. Patent No. 5,828,677 (Sayeed et al); claim 3 was rejected under 35 U.S.C. § 103(a) as being unpatentable over Messenger in view of Sayeed et al and further in view of U. S. Patent No. 6,449,246 (Barton et al); claim 4 was rejected under U. S.C. § 103(a) as being unpatentable over Messenger in view of U. S. Patent No. 6,064,692 (Chow); and claims 5 and 8 were rejected under 35 U. S. C. § 103(a) as being unpatentable over Messenger in view of U. S. Patent No. 5,982,760 (Chen).

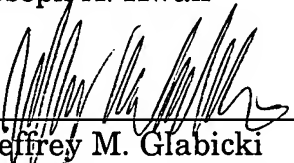
Since this final rejection of the claims is essentially the same as the February 17, 2004 final rejection, Applicants rely on the arguments set forth in the July 14, 2004 Appeal Brief and add the following. The current final rejection indicates that "wherein if the collected error statistics indicate a low number of errors, a higher capacity encoding/modulation scheme is selected as the particular encoding/data modulation" is disclosed in Messenger at column 2, lines 56 - 65 and column 8, line 50-column 9, line 7. With particular reference to columns 8 and 9, it is disclosed that a short spreading code is used and if an unacceptable error rate is achieved, that a long spreading code (more robust) is used. However, it clearly does not teach switching as a result of a low number of errors to a less robust scheme. As described in the Appeal Brief, the technique of the present invention for switching to a more or less

robust modulation based on the collected retransmission statistics allows for an optimum usage of the wireless channel. Messenger simply discloses transmitting at a less robust scheme and if a specified number of errors occur switching to a more robust scheme. Accordingly, this new portion of Messenger also does not render the claims obvious. Accordingly, Applicants respectfully submit that the claims should be passed to allowance. Although the references cited in the February 27, 2002 IDS were present in the parent application, they are herewith attached along with a Form PTO-1449 for convenience.

Respectfully submitted,

Joseph A. Kwak

By



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Enclosures



PTO/SB/21 (09-04)

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**TRANSMITTAL
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First Named Inventor

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Art Unit

2665

Examiner Name

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Attorney Docket Number

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ENCLOSURES (Check all that apply)

<input type="checkbox"/> Fee Transmittal Form	<input type="checkbox"/> Drawing(s)	<input type="checkbox"/> After Allowance Communication to TC
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Remarks		

SIGNATURE OF APPLICANT, ATTORNEY, OR AGENT

Firm Name	VOLPE AND KOENIG, P.C.		
Signature			
Printed name	Jeffrey M. Glabicki		
Date	December 8, 2004	Reg. No.	42,584

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Typed or printed name	Jeffrey M. Glabicki	Date	December 8, 2004

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